

HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

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Writ Petition No. 17536 of 1997

Between

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The Secretary, Central Council, Singareni Collieries ..Petitioner
Workers Union (AITUC), Godavari Khani

AND

The Industrial Tribunal I, Hyderabad and another ..Respondents

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:: JUDGMENT ::

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Counsel for the petitioner Sri R.N.Reddy

Counsel for the respondent No.1
Counsel for the respondent No.2 Ms.V.Uma Devi

1.3.2007

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Writ Petition No. 17536 of 1997

This writ petition is filed questioning the award of the Industrial Tribunal I, Hyderabad whereby the dispute raised by the Secretary, Central Council, Singareni Collieries Workers Union (AITUC) pertaining to the dismissal of Thati Rajaiah, (hereinafter referred to as 'the workman') Coal Filler of GDK 2 A Incline with effect from 7.1.1989, was decided against the workman.

The facts, which are necessary for the purpose of the present case, are as under:

The workman was working as Coal Filler in GDK 2 A Incline of Singareni Collieries Company Limited, Area I, Ramagundam Division. A fatal accident took place on 28.10.1988 involving the death of Bangari Dharmaiah, Coal Filler of GDK 2 A Incline while he was handling the loads at the curve of the tramming level.

A charge sheet was served on the workman and it reads as follows:

“On 4.11.1988 in 2nd shift, you booked your 'IN' muster and did not report to the overman for distribution . You instigated and participated in illegal strike by the Coal Fillers of GDK 2 A Incline on 4.11.1988 in 2nd shift demanding musters to the Coal Fillers of 7 A and 7 B Gange and spare Coal Fillers number 18 who had not filled any tub in 40 Dip District/1 (seem on 3.11.1988 in 2nd shift and also instigated them (Coal Fillers) to refuse to do their normal work of handling loads and empties at the curve of tramming level which is a regular practice in the mine.

You are aware that the Government of India has declared the coal industry as public utility service which was circulated vide letter No.P.40/23/ 68/IR/1096 dated 2.7.1988 and a copy of the same was exhibited on the notice board at the mine.

Consequent upon your participation and instigation all the coal fillers struck work illegally in 2nd shift of 4.11.1988. Your instigation and participation in illegal strikes has caused a loss of about 3053 tones production value at about Rs.8,60,200/-.

You are also aware that the Government of India, Ministry of Home Affairs vide office order No.I/11025/3/88/IS (US 011) dated 21.9.1988 in exercise of powers conferred by sub section 3 of Essential Services and Maintenance Act prohibited the strike in any services of the Singareni Collieries Company Limited and the same was also displayed on the notice board as per letter No.P.RG(P) 1A/1252 dated 1.10.1988.

The above acts of your amount to misconduct under Company's Standing Orders 16(9) and 16 (19) which reads as follows:

16(9) Causing damage to work in progress or to property of the Company.

16(19) Any breach of the Indian Mines Act or any other Act or of any Rules or Byelaws thereunder or of standing orders.

You are hereby directed to explain within 3 days of the receipt of this charge sheet as to why disciplinary action should not be taken against you”.

This has eventually led to the dismissal of the workman. The Secretary, Central Council, Singareni Collieries Workers Union (AITUC) got the Dispute raised under Section 2 A of the Industrial Disputes Act, 1947 (for short, 'the Act'). As the enquiry of the Management was held invalidated, a fresh enquiry was conducted by the Industrial Tribunal into the alleged misconduct of the workman. Four witnesses were examined on behalf of the workman while five witnesses were examined on behalf of the Management. Exs.M1 to M6 were marked on the side of the workman and Exs.M4 A, M7 to M10 were marked on behalf of the Management.

The Industrial Tribunal after consideration of the evidence on record and the contentions raised by either side, passed the Award impugned in this writ petition.

Heard Sri R.N.Reddy, learned counsel for the petitioner and Ms.V.Uma Devi, learned counsel appearing for respondent No.2 Organisation.

Sri R.N.Reddy, learned counsel for the petitioner submitted that having invalidated the enquiry conducted by the Management, it is incumbent upon the Industrial Tribunal to render a finding on the misconduct of the workman. According to him, the Industrial Tribunal has not given any such finding and hence the Award is liable to be set aside. Sri R.N.Reddy further contended that along with the workman, another person by name Basani Rajaiah was also said to be involved in the illegal strike and that while he was let off, the workman was dismissed from service which constitutes disparity in imposition of punishment. The learned counsel also raised the contention that the punishment imposed against the workman is disproportionate to the gravity of the misconduct.

Per contra, Ms.Uma Devi contended that the Industrial Tribunal gave full opportunity to both the parties to adduce evidence and that on appreciation of the entire evidence on record, it held that the workman has participated in the illegal strike and further instigated the co-workmen to go on sudden strike causing enormous monetary loss to the Organisation. She however submits that the grounds of disparity in punishment and disproportionality of punishment were not specifically raised either before the Industrial Tribunal or before this Court in the present writ petition and that therefore, these contentions cannot be considered.

The Industrial Tribunal has analysed the evidence recorded by it

in para 8 of the Award which reads as under:

“All the Management Witnesses have categorically stated about the part played by the petitioner workmen and one Basani Rajaiah. Both these persons first went to MW 3 Head Overman and asked him not to distribute the work unless the dispute relating to 3.11.1988 regarding fall back musters is settled. Though MW 3 requested them to continue to work and the issue could be settled later on, they did not heed the advice of MW 3. The part played by the petitioner workman was spoken to by MW. 4 Overman, MW.2 the then Senior Under Manager. MW 5 another Overman and MW.6 the then Manager of the Mine. They have stated at length that the petitioner workman Thati Rajaiah himself played an active part and instigated the workmen to strike work not only on that day but also continuously at the commencement of each shift from 4.11.1988 to second shift on 20.11.1988 which caused loss of lacks of Rupees to the Company nearly 7000 tonns of coal was not taken out. MW.6 Agent deposed that the loss is worth of Rs.29,32,500/- towards production of coal. The present version of the petitioner – workman that he did not take any active part, cannot be disbelieved.”

The afore-extracted para clearly reveals that the Industrial Tribunal has relied upon the evidence of MWs.2 to 6 and specifically rendered the finding that the version of the workman that he did not take any active part in the strike, cannot be believed. Technically, the Industrial Tribunal may not have used the formal expression ‘misconduct’ on the part of the workman, but a reading of para 8 as extracted above and also para 9 clearly indicate the mind of the Industrial Tribunal that it was satisfied that the workman was guilty of misconduct. It is not in dispute that no prior strike notice was given by the Union, rendering the strike unlawful. The evidence on record as discussed by the Industrial Tribunal clearly reveals that the workman

has played an active role in the workers going on strike by instigating the co-workmen which caused enormous loss to the second respondent organisation.

In the light of these facts of the case, I am unable to agree with the contention of the learned counsel for the petitioner that the Industrial Tribunal has not held the misconduct of the workman as established.

As regards the other two contentions, they are not raised in the affidavit filed in support of this writ petition. No averment about the ground of disparity in punishment or that of the disproportionality of the punishment was raised before the Industrial Tribunal. In the absence of any material to show that these two contentions were specifically raised and not dealt with by the Industrial Tribunal, I am unable to accept the contention of the learned counsel for the petitioner that the Award suffers from an error warranting interference of this Court. Even otherwise, it is not the case of the workman that common disciplinary proceedings were initiated against him and Basani Rajaiah. The workman failed to file any relevant material either before the Industrial Tribunal or before this Court, such as charge sheet issued to Basani Rajaiah and the enquiry report and the order passed by the Disciplinary Authority. In the absence of this material, there would have been no occasion for the Industrial Tribunal to make a comparison between the two cases in order to render a finding about the alleged disparity in punishment.

As regards the disproportionality, the charge against the workman being very grave, it cannot be said that the punishment of dismissal from service is too disproportionate as to disturb the judicial conscience of the Tribunal or the Court. I therefore see no error in the impugned Award of the Industrial Tribunal warranting interference of

this Court under Article 226 of the Constitution of India.

For the aforementioned reasons, the writ petition is dismissed.

No costs.

C.V.NAGARJUNA REDDY,J

1.3.2007.

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